

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<b>FORTIS CORPORATE INSURANCE, as</b>	)	Case No. 07-03731
<b>subrogee of Empire Resources, Inc.,</b>	)	
	)	(Judge Victor Marrero)
<b>Plaintiff,</b>	)	
	)	
<b>-v-</b>	)	
	)	
<b>TOTAL QUALITY LOGISTICS, INC.,</b>	)	<u><b>AFFIDAVIT OF ROBERT L. GREEN</b></u>
<b>et al.,</b>	)	
	)	
<b>Defendant /Third-Party Plaintiff,</b>	)	
	)	
<b>-v-</b>	)	
	)	
<b>BOLIVAR INSURANCE AND REAL</b>	)	
<b>ESTATE, INC. and CANAL INSURANCE</b>	)	
<b>CO.,</b>	)	
	)	
<b>Third-Party Defendants.</b>	)	
	)	

STATE OF TENNESSEE    )  
                                      )  
COUNTY OF SHELBY    )

Robert L. Green, being first duly sworn, makes oath as follows:

1. That I am co-counsel of record on the Complaint filed on behalf of Hill Trucking, Inc. ("Hill") in the Chancery Court for Hardeman County, Tennessee, attached as Exhibit 1 being a true and correct copy of the Complaint filed in Cause No. 16219.
2. That the named Defendants have answered as well as the cross-Defendant, Bolivar Insurance and Real Estate Agency, Inc. ("Bolivar"), the written discovery and

production of documents has, for the most part, been concluded and the depositions of the Plaintiff's President, Secretary and Operations Manager have been concluded and Bolivar's officials' depositions are scheduled for March 5, 2008.

3. That following a hearing on Hill's Motion for Court Ordered Mediation, Chancellor William Cole entered an Order granting the Motion and entered a Scheduling Order setting a deadline for the mediation after the hearing of all dispositive motions on May 28, 2008, attached as Exhibits 2 and 3 being a true and correct copy of said Orders entered on January 25, 2008.


4. The issue before the Chancery Court of Hardeman County, Tennessee is the determination of which party is responsible for submitting an incorrect VIN number on the truck involved in the loss of cargo insured by Fortis, and/or the party that failed to correct the VIN number upon notification.

5. That Hill is virtually a "Mom & Pop" operation consisting of Mr. Hill, his son and three other drivers, with Mrs. Hill and daughter, Vicki, running the business out of their home. The obligation to proceed in the New York lawsuit on top of going forward in Tennessee presents an almost impossible burden on this small company.

6. That prior to filing the Motion before the Court, the Affiant sought the consent for a stay of this action from all parties. The named Defendants and Cross-Defendant, Bolivar, have agreed to join in the Motion to Stay. Fortis Corporate Insurance and Canal Insurance Co. have declined to join in the Motion.

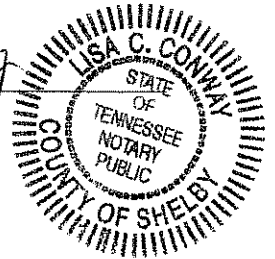
7. That mediation is the quickest, most economical and expeditious way to dispose of the contested issues in the Tennessee lawsuit and its resolution will result in the termination of the action pending in the U.S. District Court of New York.

Dated this 6<sup>th</sup> day of February, 2008.

  
ROBERT L. GREEN (TN Bar # 007849)

SWORN TO AND SUBSCRIBED before me this the 6<sup>th</sup> day of February, 2008.

  
NOTARY PUBLIC



My Commission Expires:

MY COMMISSION EXPIRES 2/23/2011

IN THE CHANCERY COURT FOR HARDEMAN COUNTY, TENNESSEE  
FOR THE TWENTY-FIFTH JUDICIAL DISTRICT AT BOLIVAR

---

HILL'S TRUCKING, INC.,

Plaintiff,

VS.

NO. 16219  
JURY DEMANDED

CANAL INSURANCE COMPANY, GREENWICH  
TRANSPORTATION UNDERWRITERS, INC. and  
BOLIVAR INSURANCE AND REAL ESTATE  
AGENCY, INC.,

Defendants.

---

COMPLAINT

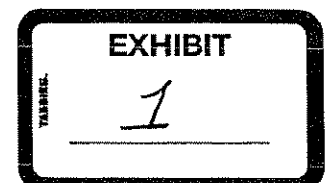
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COMES NOW the Plaintiff, Hill's Trucking, Inc. (hereinafter "Hill"), and for its complaint against Defendants says:

1. Hill is a duly organized and existing domestic corporation under the laws of the State of Tennessee with its principal place of business in Grand Junction, Hardeman County, Tennessee.

2. The Defendant, Canal Insurance Company (hereinafter "Canal") is a foreign corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Greenville, Greenville County, South Carolina.

3. The Defendant, Greenwich Transportation Underwriters, Inc. (hereinafter "G.T.U.") is a domestic corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Nashville, Davidson County, Tennessee.



4. The Defendant, Bolivar Insurance and Real Estate Agency, Inc. (hereinafter "Bolivar") is a domestic corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Bolivar, Hardeman County, Tennessee.

5. That Hill is and was at all times pertinent a common carrier of merchandise for hire in interstate commerce.

6. That Hill insured its operation as a common carrier of cargo through the Defendant, Canal, under policy number Motor Truck Cargo (MTC) 339421 with the coverage period being from June 29, 2005 through June 29, 2006.

7. That Hill's coverage under its policy with Canal was written through the Defendants, Bolivar and G.T.U.

8. That on or about September 29, 2006 the Plaintiff contracted with Total Quality Logistics to transport cargo owned by Empire Resources, Inc. and located at the Southern Worldwide Logistics, 9649 W. Wingfoot, Houston, Texas 77041 to the Trident Company, 405 N. Plano Road, Richardson, Texas 75085.

9. That this cargo consisted of five (5) coils of aluminum weighing approximately 44,881 lbs. and having a value of less than \$75,000.

10. On or about October 1, 2006, while said cargo was in the custody of Hill, the tractor, trailer and cargo was stolen. The tractor (VIN FUYDXYB7YLF17100) was recovered. The trailer and aluminum was not recovered.

11. That this loss was timely reported through the Defendants, G.T.U. and Bolivar, to Canal but Canal has refused to provide coverage.

12. Truck (tractor) with VIN FUYDXYB7YLF17100 was originally added to Canal's policy number MTC089804 by Change of Vehicle Endorsement with an effective date of January 4, 2006. See attached Exhibits 1 and 2.

13. Policy number MTC089804 expired on June 29, 2006 and was replaced by Canal's policy number MTC339421 effective June 29, 2006 to June 29, 2007.

14. At the time the Canal policy was renewed (June 29, 2006) Hill supplied Bolivar with the Vehicle Identification Number of the four (4) tractors owned by Hill on the date the application for renewal was submitted, including tractor number FUYDXYB7YLF17100.

15. When Bolivar received from G.T.U. the new policy, MTC339421, it noted that tractor number FUYDXYB7YLF17100 was not listed on the policy but that a vehicle with VIN FUYDXY137YLF17777 was listed. Hill asserts that it provided Bolivar with the correct VINs of all of its trucks/tractors and that either Bolivar transmitted the incorrect VIN or G.T.U. mistranscribed the VIN and had the policy issued showing VIN FUYDXYB7YLF17777 instead of VIN FUYDXYB7YLF17100 which was the correct VIN on the tractor which was added on January 4, 2006 and which had never been deleted. See attached Exhibit 3.

16. Bolivar brought this mistake to the attention of G.T.U. through an email messages sent on July 12, 2006 and a correction was requested. See attached Exhibit 4.

17. On August 8, 2006 G.T.U. sent a request to Bolivar for a verification of the VIN's on Hill's tractors "due to incomplete or incorrect VIN". Bolivar sent the requested information to G.T.U. on August 12, 2006. G.T.U. never requested any follow up data or information. G.T.U. failed to take any steps to correct the policy to reflect the actual VIN on the subject tractor. See attached Exhibit 5.

18. That Canal's failure to provide the coverage provided by its policy has resulted in Hill being named as a party defendant and cross-defendant in the United States District Court for the Southern District of New York and to incur additional expenses and attorney fees to defend that lawsuit.

19. That Canal has denied coverage contending that the tractor (and trailer) involved was not a listed vehicle on the policy despite two specific written communications dated July 12, 2006 and August 12, 2006 setting forth the Vehicle Identification Number (VIN) on the 2000 Freightliner which communications were sent by and between Bolivar and G.T.U..

20. That the denial of coverage by Canal is not justified under the facts and was not made in good faith, and is a violation of the fiduciary duty it owes to the Plaintiff as a premium paying insured.

21. That as a result of Canal's bad faith in refusing to provide the coverage to Hill as provided for in the contract existing between these parties, Hill has suffered additional expenses, loss of time in dealing with claims made against it as well as court costs and attorney fees.

22. That Hill asserts that it is entitled to recover, in addition to the loss incurred and interest, an additional twenty-five (25%) percent of such sum pursuant to T.C.A. §56-7-105(a).

23. That Hill assert that Canal's refusal to provided coverage and its refusal to pay for the lost cargo is vexations and without reasonable cause and entitles it to recover attorney fees as provided for in T.C.A. §56-7-105(b).

24. That Hill charges and avers that Canal acted unfairly and was deceptive in its refusal to provide coverage under its policy of insurance with the Plaintiff and therefore its in violation of the provisions of the Consumers Protection Act, T.C.A. §47-18-109 and therefore

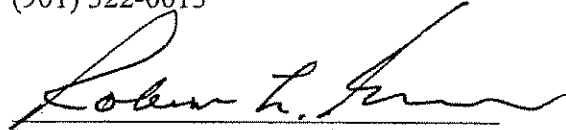
asserts that it is entitled to reasonable attorney fees, expenses and an award of three (3) times the actual damages sustained.

PREMISES CONSIDERED, Plaintiff, Hill's Trucking, Inc., prays:

1. That proper process issue and be served upon the Defendants and that the Defendants be required to properly respond or a default judgment be entered against them.
2. That at the trial of this case the Plaintiff be granted a judgment against the Defendants jointly and/or severally for the sum of \$90,000.
3. That in addition the Plaintiff demands from Canal, pursuant to T.C.A. §56-7-105(a) and 56-7-105(b) the statutory penalty of twenty-five (25%) percent of the loss incurred and interest and reasonable attorney fees.
4. That in addition the Plaintiff demands from Canal treble damages and reasonable attorney fees for its violation of T.C.A. §47-18-109.
5. For such further relief as the Court deem appropriate under the circumstances.

Respectfully Submitted,

RUSSELL X. THOMPSON (#008119)  
5100 Poplar Avenue, Suite 2700  
Memphis, Tennessee 38137  
(901) 322-6013



ROBERT L. GREEN (#007849)  
Allen, Summers, Simpson, Lillie & Gresham, PLLC  
80 Monroe Avenue, Suite 650  
Memphis, Tennessee 38103  
(901) 763-4200

ATTORNEYS FOR PLAINTIFFS



P.O. BOX 149 - PM (901) 630-3411  
BOLIVAR, TENNESSEE 38008

REGARDING: Hill's Trucking, Inc.

Pol. BA0687902

DATE: 1/4/06

Please add a 2000 Freightliner Serial #1FUVDXYB7YLF17100 Value 15,000.

No Lein.

Thanks,

RECEIVED  
JAN 11 2006  
STC

EXHIBIT

1

It is agreed that policy to which this endorsement is attached is amended  
(1) to EXCLUDE coverage on the following described vehicle(s).

(2) to INCLUDE coverage on the following described vehicle(s) or location(s).

PR 0.482 -

RETURN PREMIUM:

DOWNPAYMENT

ESCROW DEPOSIT

DOWNPAYMENT \_\_\_\_\_  
The remaining \_\_\_\_\_ installments due will change by \_\_\_\_\_ from \_\_\_\_\_  
to \_\_\_\_\_ beginning with the installment due \_\_\_\_\_

Insured HILL'S TRUCKING, INC.

Expiration Date 06/29/2006

Issue Date 02/08/2006 Authorized Signature \_\_\_\_\_

GREENWICH TRANSPORTATION UNDERWRITERS

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED**

## Canal Insurance Company

Greenville, South Carolina

(Rev. 10-1997)

Form E-3C

EXHIBIT

2

414703313

MOTOR TRUCK CARGO

**Canal Insurance Company**  
BOX 7 • GREENVILLE, SOUTH CAROLINA 29602

**MTC339421**

BUILDING MATERIALS (200)

Consent/Use Year  
C089804

<input checked="" type="checkbox"/>	SEE LIST FILED RECORD
<input type="checkbox"/>	
<input type="checkbox"/>	

Surcharge \_\_\_\_\_ Class \_\_\_\_\_ Rating \_\_\_\_\_  
Insured's Phone: 7317942908  
Insured's ID: PROVIDED

1. Named Insured and Address  
HILL'S TRUCKING, INC.  
2305 HWY. 37  
GRAND JUNCTION, TN 38038 (HARDEMAN county)

BOLIVAR INSURANCE  
800 WEST MARKET STREET  
BOLIVAR, TN 38008  
Producer Code 668 Comm.  
Follow-Up Record

2. Policy Period: 12 months  
From 6/29/2006 To 6/29/2007  
12:01 A.M., standard time at the address of the named insured as stated here(n).

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

(1) Description of Scheduled Vehicles:

AUTO No.	Limit of Liability	Year Make Model	Vehicle Identification No.: Serial No.; Motor No.
1	100,000.00	1988 PETERBILT	1XP5DB9X3JN263477
2	100,000.00	1996 PETERBILT	1XPCDB9X4TN381226
3	100,000.00	2000 FREIGHTLINER	1FUVDXB0Y1F17097
4	100,000.00	2000 FREIGHTLINER	1FUVDXY91YLF17777 9 17180

(2) Description of Scheduled Locations:

LOC No.	Limit of Liability	Location Address	City, State, Zip
		NOT COVERED	

(3) Unscheduled Vehicles:

Limit of Liability	Reporting Adjustment Period:
\$ NOT COVERED	<input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually

Catastrophe Limit: \$ 200,000.00

(4) Refrigeration Breakdown Coverage: ☐ Included See Refrigeration Breakdown Coverage Endorsement CGO579

(5) Special Conditions and Limitations: The following items apply only if designated by an X in the box next to it. See Cargo Supplemental Endorsement CGO571.

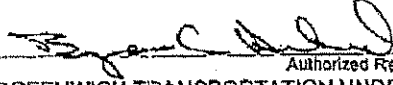
☐ Attended Vehicle ☒ Locked Vehicle ☒ Coinsurance ☒ Commodities Theft Limitations

(6) Deductible: Cargo: \$ 1,000.00 Refrigeration Breakdown: \$ N/A

(7) Premium: Rate: \$ 925.00 per vehicle Premium: \$ 3,700.00

Form numbers of endorsements attached to policy at issue: IL91CW0106 (1-06) E-1 (12-01) CGO500J (4-03) CGO501 (5-05) CGO571 (11-04) Form I (4-93) TN-1 (1-96) Info Notice: D-101 CL (1-03)

Countersigned: 220 25th Ave N., Suite 100  
Nashville, TN 37203 6/28/2008

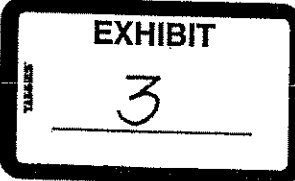
By  Authorized Representative  
GREENWICH TRANSPORTATION UNDERWRITERS  
Producer's Copy GFI/GC 06/28/06 IN HOUSE

CGO500 (11-2004)

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## ENDORSEMENT

### GENERAL CHANGE

IT IS HEREBY UNDERSTOOD AND AGREED THAT INSURED NAME AND / OR ADDRESS IS AMENDED TO  
READ AS FOLLOWS:

FROM:  
HILL'S TRUCKING, INC.  
2305 HWY. 57  
GRAND JUNCTION, TN 38039  
COUNTY OF HARDEMAN  
INSIDE CITY = N/A

TO:  
HILL'S TRUCKING, INC.  
2305 US HWY. 57 EAST  
GRAND JUNCTION, TN 38039  
COUNTY OF HARDEMAN  
INSIDE CITY = N/A

Policy Number MTC339421 Endorsement Effective Time 12:01 AM Endorsement Effective Date 06/29/2006  
Insured HILL'S TRUCKING, INC. Expiration Date 06/29/2007  
Issue Date 06/30/2006 Authorized Signature \_\_\_\_\_

GREENWICH TRANSPORTATION UNDERWRITERS

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

**Canal Insurance Company**

Greenville, South Carolina

(Rev. 12-1991)

Form E-1

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## ENDORSEMENT

### GENERAL CHANGE

IN CONSIDERATION OF THE PREMIUM CHARGED, IT IS HEREBY UNDERSTOOD AND AGREED THAT THE COMMODITY BEING HAULED BY THE NAMED INSURED IS AMENDED TO READ BUILDING MATERIALS, FIBERGLASS AND STEEL IN LIEU OF AS WRITTEN.

Policy Number MTC339421 Endorsement Effective Time 12:01 AM Endorsement Effective Date 06/29/2006  
Insured HILL'S TRUCKING, INC. Expiration Date 06/29/2007  
Issue Date 06/28/2006 Authorized Signature GREENWICH TRANSPORTATION UNDERWRITERS

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED  
**Canal Insurance Company**

Greenville, South Carolina

(Rev. 12-1991)

Form E-1

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**CANAL****CARRIERS**  
Broad Form Cargo Coverage  
Scheduled Vehicle Form

Throughout this policy, the terms you and your pertain to the named insured provided in the Declarations. The terms we, us and our pertain to the insurance company. Terms in *italics* throughout this form are further defined in Part VI of this form.

**I. COVERAGE**

We will pay for direct physical accidental loss from any covered causes of loss to covered cargo.

**A. Covered Causes of Loss**

Covered causes of loss means loss for which you are legally liable while cargo is in your care, custody or control as a carrier. Losses caused by or resulting in or from excluded causes of loss in Section II are not covered by this insurance policy.

**B. Covered Cargo**

Covered cargo means cargo of others in transit under one of the following written documents issued by you: bill of lading, tariff or shipping receipt. The cargo must be on a scheduled vehicle, or in the actual process of being loaded or unloaded by the insured within fifty (50) feet of the scheduled vehicle, or at a scheduled location.

**C. Cargo Not Covered**

Covered cargo does not include:

1. Contraband or cargo illegally being transported.
2. Explosives, fireworks or radioactive material.
3. Securities or evidences of debt.
4. Money, currency, gold or silver bullion or platinum.
5. Precious stones, jewelry or similar valuables.
6. Animals, unless death results or is made necessary within twenty-four (24) hours by a loss not otherwise excluded.
7. Cargo on a scheduled vehicle at any location for more than seventy-two (72) hours from the time the scheduled vehicle arrived at that location.
8. Cargo at a scheduled location for more than thirty (30) days from the time the cargo arrived at the scheduled location.

**D. Extensions of Coverage****1. Freight Charges**

We will pay the earned freight charges you are unable to collect as a result of a covered cause of loss. The most we will pay in any one occurrence is \$1,000. This limit is in addition to the Limit of Liability shown on the Declarations Page.

**2. Debris Removal**

We will pay your expense to remove the debris of covered cargo as a result of a covered cause of loss. The most we will pay in any one occurrence is \$1,000. However, in no event will our payments for debris removal exceed the value of the cargo being hauled. This limit is in addition to the Limit of Liability shown on the Declarations Page.

**3. Sue & Labor**

We will reimburse reasonable and necessary expenses you incur solely to save and protect covered cargo from imminent loss. The most we will pay in any one occurrence is \$5,000. This limit is in addition to the Limit of Liability shown on the Declarations Page.

**II. EXCLUSIONS****A. We will not pay for loss caused directly or indirectly, or in whole or in part, by any of the following, or which results in or from any of the following:**

1. Loss of use or loss of market.
2. Delay, whether or not the delay is caused by a covered cause of loss.
3. Breakdown or malfunction of refrigeration equipment or its associated component parts including ductwork.
4. Abandonment of covered cargo.
5. Dishonest acts by you, anyone else with a financial interest in the cargo, your or their employees or authorized representatives or anyone else entrusted with the cargo, whether acting alone or in collusion with other persons, whether occurring during the hours of employment or otherwise.
6. Your neglect to use all reasonable means to save and preserve the cargo at the time of and after any covered cause of loss.
7. Water damage, rust, or warpage unless loss is caused by or results from fire, lightning, or explosion, collision, overturn, or flood, meaning the rising of any natural body of water.
8. Failure to maintain proper temperature unless the failure is caused by or results from fire, lightning, explosion, collision, overturn or a scheduled vehicle, or flood, meaning the rising of any natural body of water.

Form CGO501

Page 1 of 2

(Rev. 6-2005)

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9. Liability assumed under a written or oral contract beyond that imposed by law on a common carrier for hire.
- B. We will not pay for loss caused directly or indirectly by any of the causes listed below. Such losses are excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss:

1. War and military action.
  - (a) War, including undeclared or civil war.
  - (b) Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government sovereign or other authority using military personnel or other agents.
  - (c) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
2. Nuclear Hazard
  - (a) Any weapon employing atomic fission or fusion.
  - (b) Nuclear reaction or radiation or radioactive contamination from any other cause.
3. Governmental action destruction or seizure of property by order of governmental authority. But we will pay for loss made necessary by acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this coverage form.

### III. DEDUCTIBLE

We will not pay for loss in any one occurrence until the amount of the adjusted loss exceeds the deductible amount shown on the Declarations Page. We will then pay the amount of the adjusted loss in excess of the deductible up to the applicable Limit of Liability.

### IV. LIMIT OF LIABILITY

The most we will pay in any one occurrence for loss to cargo:

1. on a *scheduled vehicle* is the Limit of Liability for that *scheduled vehicle* shown on the Declarations Page;
2. at a *scheduled location* is the Limit of Liability for that *scheduled location* shown on the Declarations Page;
3. on an owned newly acquired vehicle is the lowest limit for any *scheduled vehicle* shown on the Declarations Page (any newly acquired vehicle designated or described on the Schedule will be considered a covered vehicle you own and not a covered vehicle you hire, borrow or lease);

but no more than the Catastrophe Limit shown on the Declarations Page.

### V. OTHER TERMS

In addition to the conditions shown on CGO500J, the following terms apply to this policy:

- A Territory: Covered Cargo only while located in the United States of America and Canada.
- B Fines, Assessment or Penalties  
We will not pay any costs, penalties, or punitive damages as a result of your violation of any law or regulation.
- C Filing Reimbursement  
You must reimburse us for any payment we make solely because of a federal, state or provincial filing we have made under the policy on your behalf. Reimbursement must be made within fourteen (14) days of our notice to you.

### VI. DEFINITIONS

- A. Loss means direct physical accidental loss or damage.
- B. *Scheduled vehicle* means a vehicle listed on the Declarations Page as a *scheduled vehicle*.  
*Scheduled vehicle* also means:
  1. A vehicle which permanently replaces one listed. You must report the change to us within thirty (30) days.
  2. A temporary non-owned substitute for a disabled *scheduled vehicle* but only for the first thirty (30) days of substitution.
  3. An owned additional newly acquired vehicle. Premium will be charged from the date of acquisition.
  4. Any trailer while physically attached by the insured or the insured's authorized representative to a *scheduled vehicle*.
- C. *Scheduled location* means the physical location as described on the Declarations Page.
- D. The Catastrophe Limit is the most we will pay for any one event or continuing events resulting in loss to Covered Cargo regardless of the number of *scheduled vehicles* or *scheduled locations* involved.
- E. Lease refers to a motor vehicle that is titled in the name of a leasing company but operated by the named insured (the lessee) for a specified period and lease payment.
- F. *Newly acquired vehicle* means an owned motor vehicle titled to the named insured and reported to us within 30 days of acquisition.

#### Please note:

Some provisions in this policy restrict coverage. Be sure and read the entire policy to determine your rights and duties, plus what is and is not covered.

(Rev. 5-2005)

Form CGO501

Page 2 of 2

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# CANAL

## CLAIMS REPORTING INFORMATION NOTICE

### 800-452-6911

Online Claim reporting is also available at [www.canal-ins.com](http://www.canal-ins.com)

#### To All Canal Insureds:

Many accidents result in damages which require immediate attention in order to prevent further loss. When a serious bodily injury, a hazardous spill which may impact the environment or damage to perishable cargo has occurred, please call the Canal Claims Reporting number listed above as soon as possible to report the claim.

When reporting a loss, please be prepared to give the following information:

- \* Insured name, driver and policy number
- \* Insured Vehicle Information (make, model and VIN)
- \* Exact location of the occurrence
- \* Description of the occurrence
- \* Type of loss and any environment affected
- \* Other persons or vehicles involved
- \* A contact number for someone at the scene

Please communicate these procedures to all drivers and claim reporting personnel. We appreciate your business and assistance in providing prompt notice of accidents.

(Rev. 1-2003)

D-101 CL

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CARGO SUPPLEMENTAL  
ENDORSEMENT

# CANAL

This endorsement modifies insurance coverage under this policy. Only those items designated in the Special Conditions and Limitations section on the Declarations Page apply.

## I. ATTENDED VEHICLE

We will not be liable for loss to Covered Cargo caused by theft from a *scheduled vehicle*, or an unscheduled vehicle on a reporting form policy, unless at the time of the theft you or an employee or other person whose only duty is to attend the vehicle is actually in or upon the vehicle. This limitation does not apply to vehicles while at a *scheduled location*.

## II. LOCKED VEHICLE

We will not be liable for loss to Covered Cargo caused by theft from a *scheduled vehicle*, or an unscheduled vehicle on a reporting form policy, unless at the time of the theft the windows, doors and compartments of the vehicle and the trailer or container, if applicable, were closed and locked and there are visible signs that the theft was the result of forced entry.

We will not be liable for loss to Covered Cargo caused by theft from a *scheduled location* unless at the time of the theft the windows, doors and compartments of the vehicle, trailer, container or building containing the cargo were closed and locked and there are visible signs that the theft was the result of forced entry.

## III. COMMODITIES THEFT LIMITATION

In the event of loss to Covered Cargo caused by theft of the following commodities either from a *scheduled vehicle*, an unscheduled vehicle on a reporting form policy, or a *scheduled location*, we will not be liable for more than 10% of the limit of insurance applying to that vehicle or *scheduled location*:

- A. Cigarettes, cigars, or other finished tobacco products.
- B. Drugs and pharmaceutical products.
- C. Furs or garments trimmed with fur.
- D. Liquors or beverages exceeding 10% alcohol content.
- E. Radio, photographic, electronic or communications equipment, including, but not limited to, computers, computer parts and accessories, software, compact and digital discs, video tapes, video and digital games, and video and sound playing and recording equipment.
- F. Copper and copper products, precious metals and alloys.

## IV. COINSURANCE

You must carry sufficient insurance in order to receive full payment for a loss. We will not pay you more of any loss than the percentage obtained by dividing the applicable Limit of Liability as shown on the Declarations Page by 90% of the total value of property on the scheduled vehicle involved in the loss, or on an unscheduled vehicle on a reporting form policy, at the time of the loss. In no event, however, will our payment exceed the applicable Limit of Liability as shown on the Declarations Page.

All other terms, conditions, and limitations of the policy remain unchanged.

(Rev. 11-2004)

Form CGO571

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From: 7316500778 Page: 10/18 Date: 1/11/2007 12:44:31 PM

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**FORM I****UNIFORM MOTOR CARRIER CARGO  
INSURANCE ENDORSEMENT**

It is agreed that:

1. The certification of the policy, as proof of financial responsibility under the provisions of any State motor carrier law or regulations promulgated by any State Commission having jurisdiction with respect thereto, amends the policy to provide insurance for motor carrier cargo liability in accordance with the provisions of such law or regulations to the extent of the coverage and limits of liability required thereby; provided only that the insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except by reason of the obligation assumed in making such certification.
2. The Uniform Motor Carrier Cargo Certificate of Insurance has been filed with the State Commissions indicated below hereof.
3. This endorsement may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the company or the insured giving thirty (30) days' notice in writing to the State Commission with which such certificate has been filed, such thirty (30) days' notice to commence to run from the date the notice is actually received in the office of such Commission.

Attached to and forming part of Policy No. MTC339421Issued by Canal Insurance Company, herein calledCompany, of Greenville, South Carolinato HILL'S TRUCKING, INC.of 2305 HWY. 57 GRAND JUNCTION, TN 38034Dated at Nashville, TN 37203 this 28th day of June 20 06Countersigned by GREENWICH TRANSPORTATION UNDERWRITERS  
Authorized Representative

X -- INDICATES STATE COMMISSIONS WITH WHOM UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE HAS BEEN FILED.							
ALABAMA		HAWAII		MICHIGAN		NORTH CAROLINA	
ALASKA		IDAHO		MINNESOTA		NORTH DAKOTA	
ARIZONA		ILLINOIS		MISSISSIPPI		OHIO	
ARKANSAS		INDIANA		MISSOURI		OKLAHOMA	
CALIFORNIA		IOWA		MONTANA		OREGON	
COLORADO		KANSAS		NEBRASKA		PENNSYLVANIA	
CONNECTICUT		KENTUCKY		NEVADA		RHODE ISLAND	
DELAWARE		LOUISIANA		NEW HAMPSHIRE		SOUTH CAROLINA	ICC - MC277759
DISTRICT OF COLUMBIA		MAINE		NEW JERSEY		SOUTH DAKOTA	E-103
FLORIDA		MARYLAND		NEW MEXICO		TENNESSEE	X
GEORGIA		MASSACHUSETTS		NEW YORK		TEXAS	

MC 2444 (Ed. 6-88) U.P. &amp; S.

(Rev. 4-93)

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From: 731658...8 Page: 11/18 Date: 1/11/2007 12:44:31 PM

## CARGO Inland Marine General Conditions

Throughout this policy, the terms *you* and *your* pertain to the named insured provided in the Declarations. The terms *we*, *us* and *our*, pertain to the insurance company. Terms in *italics* are further defined throughout this policy.

All coverage parts included in this policy are subject to the following conditions:

### I. CANCELLATION

- A. You may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- B. We may cancel this policy by mailing or delivering to you written notice of cancellation at least ten (10) days before the effective date of cancellation.
- C. We will mail or deliver our notice to your last mailing address known by us.
- D. Our notice of cancellation will state the effective date of cancellation. Your coverage will end on that date.
- E. If we cancel, the refund of premium will be pro-rata. If you cancel, the refund will be in accordance with the short rate cancellation table shown in this policy. Cancellation will be effective even if we have not made or offered a refund. Cancellation for non-payment of premium shall be considered cancellation at your request.
- F. Proof of mailing will be sufficient proof of notice.

### II. AUDIT OF RECORDS

We may audit or examine your books or records as they relate to this policy at any time during the policy period and up to three (3) years afterwards.

### III. INSPECTIONS

We have the right but are not obligated to make inspections at any time. This condition applies not only to us but also to any rate service, advisory or similar organization which makes insurance inspections, reports or recommendations.

### IV. CHANGES

This policy contains all the agreements between you and us concerning this insurance. This policy's terms and conditions can be amended or changed only by endorsement issued by us and made part of the policy.

### V. TRANSFER OF YOUR RIGHTS AND DUTIES

Under this policy your rights and duties may not be transferred to anyone else without our written consent except in the case of your death. If you die your rights and duties will be transferred to your legal representative but only while acting in the scope as your legal representative.

### VI. LOSS CONDITIONS

#### A. Abandonment

There can be no abandonment of any property to us.

#### B. Your duties in the event of loss.

You must see that the following are done in the event of loss:

1. You must give us immediate notice of the loss including a description of the cargo, and a description of how, when and where the loss occurred.
2. You must notify the police if a law may have been broken.
3. You must take reasonable steps to protect the cargo from further damage. With regard to animals, we will not pay for expenses incurred after seventy-two (72) hours from the date of loss. You should keep a record of your expenses for consideration in the settlement of the claim.
4. You must permit us to inspect the cargo and records proving loss.
5. You must make no statement that will assume obligation or admit any liability concerning the cargo loss without our consent.
6. If requested, you must permit us to question you under oath about any matter relating to your claim or this insurance, including your books and records. You must sign your answers.

From: 73165.../8 Page: 12/18 Date: 1/11/2007 12:44:31 PM

7. You must send us a signed, sworn statement of loss containing information WE REQUEST within sixty (60) days after our request. We will supply you with necessary forms.
8. You must cooperate with us in the investigation or settlement of any claim.
9. You must promptly send us any legal notices you receive concerning loss to cargo.
- C. Loss Payment**  
We will pay any loss covered within thirty (30) days after we reach agreement with you or the entry of a final judgment. We will not be liable for any part of a loss that has been paid by others.
- D. Other Insurance**  
If you have other insurance covering the same loss as this insurance we will pay only excess over what you should have received from the other insurance. We will pay the excess whether you can collect on the other insurance or not.
- E. Pair, Sets or Parts**
1. In case of loss to any part of a pair or set, we may repair or replace any part to restore the pair or set to its value before the loss or pay the difference between the value of the pair or set before and after the loss.
  2. In case of loss to any part of covered cargo consisting of several parts when complete, we will only pay for the value of the lost or damaged part.
- F. Privilege to Adjust With Owner**  
In the event of loss involving cargo of others in your care, custody or control, we have the right to:
1. Settle the loss with the owners of the cargo. A receipt for payment from the owners of that cargo will satisfy any claim of yours.
  2. Provide a defense for legal proceedings brought against you. If we provide defense, the legal expense will be at our cost and will not reduce the applicable limit of insurance of this policy.
- G. Recoveries**  
Any recovery of salvage on a loss will accrue entirely to our benefit until the sum paid by us has been recovered.
- H. Subrogation And Rights Of Recoveries Against Others**  
If any person, organization, company or corporation to or for whom we make payment of claim under this policy has rights to recover damages from another party or parties, those rights are transferred to us. That person, organization, company or corporation must do everything necessary to secure our rights and must do nothing after the loss to impair them.
- VII. OTHER CONDITIONS**
- A. No Benefit to Bailee**  
No person or organization, other than you, having custody of the cargo, will benefit from this insurance.
- B. Policy Period**  
We cover loss to cargo commencing during the policy period shown on the Declarations Page.
- C. Legal Action**  
No one may bring legal action against us unless the terms of this coverage have been complied with and the action is brought within two (2) years after you first have knowledge of the loss.
- D. Concealment, Fraud or Misrepresentation**  
This coverage is void in any case of fraud, intentional concealment, or misrepresentation of a material fact by you or any other party at any time as respects the coverage, the cargo, your interest in the cargo or a claim under the policy.

Your policy has been signed below on our behalf by our President and by our Secretary. However, your policy will not be binding on us unless it is also countersigned by one of our duly authorized agents.

  
Secretary

  
President

11/29/2006 09:08 7316583778

GTU

BOLIVAR INSURANCE RE

PAGE 01

*Bolivar Insurance & Real Estate Agency, Inc.*

800 W. MARKET ST.

P.O. BOX 146 — PH. (901) 655-3011

BOLIVAR, TENNESSEE 38008

REGARDING: Hill's Trucking, Inc. Pol. BA 0687968 DATE: 7/12/2006

Please correct # 2 the 2000 Freightliner Serial # to read 1FUTDXYB1-  
YLF17100.

*Theresa  
Loren*

EXHIBIT

4

05/17/2007 16:13 FAX 731 658 37

BOLIVAR INS & R. E. INS.

003

164007872

ISSUE DATE: 8/8/2006

TO: BOLIVAR INSURANCE

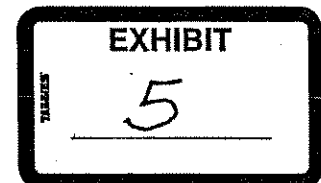
FM: GREENWICH TRANSPORTATION UNDERWRITERS - ZV

RE: CANAL POLICIES ENCLOSED

PLEASE REPLY TO ANY FOLLOW UP NEEDED.

POLICY #	INSURED NAME	FOLLOW UP NEEDED
C339421	HILL'S TRUCKING, INC.	Due to incomplete or incorrect VIN, please verify the VIN on the following vehicles: 5.
8-12-06		
2000 Freightliner	Serial # 1FUYDXB0Y1F17097	
2000 Freightliner	" " 1FUYDXB7YLF17100	
1996 Peterbuilt	" " 1XPCDB8X4TN381226	
1997 Peterbuilt	" " 1XPSDB8X5VN430834	
1993 Kenworth	" " 1XKADRX7P5612633	
1990 Peterbuilt	" " 1XPSDB9XZLD284630	

BOLIVAR INSURANCE  
800 WEST MARKET STREET  
BOLIVAR, TN 38008



414703592

07000/63542-RDT

IN THE CHANCERY COURT FOR HARDEMAN COUNTY, TENNESSEE  
FOR THE TWENTY-FIFTH JUDICIAL DISTRICT AT BOLIVAR

HILL'S TRUCKING, INC.,

Plaintiff,

vs.

CANAL INSURANCE COMPANY,  
GREENWICH TRANSPORTATION  
UNDERWRITERS, INC. and BOLIVAR  
INSURANCE AND REAL ESTATE  
AGENCY, INC.,

Defendants.

NO. 16219  
JURY DEMAND

A TRUE COPY.

ATTEST:

This the 25 day of January, 2008

Janice M. Bodiford

Janice M. Bodiford, Clerk & Master  
of the Chancery Court  
of Hardeman County, Tennessee

ORDER OF REFERENCE

This matter came to be heard before the Hon. William Cole on January 23, 2008 upon Plaintiff's Motion for Rule 31 Court Ordered Mediation, statements of counsel, and the entire record in this cause from which the Court finds that the Motion is well taken and should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that this matter be referred to mediation in compliance with Supreme Court Rule 31.

ENTERED this 25<sup>th</sup> day of January, 2008.

William Cole  
CHANCELLOR WILLIAM COLE

FILED Jan. 25, 2008  
at 12:45 o'clock, P.M.

JANICE M. BODIFORD  
CLERK & MASTER

BY Janice M. Bodiford

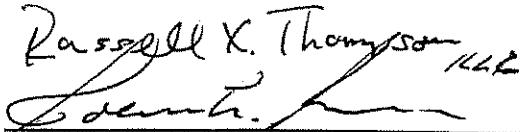
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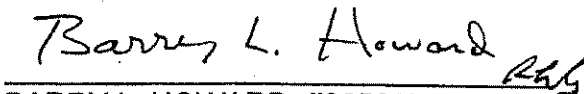
APPROVED FOR ENTRY:

 *Russell X. Thompson*

RUSSELL X. THOMPSON, #008119

ROBERT L. GREEN, #007849

Attorneys for Plaintiff

 *Barry L. Howard*

BARRY L. HOWARD, #005887

Attorney for Bolivar Insurance and Real  
Estate Agency, Inc.

 *R. Dale Thomas*

R. DALE THOMAS, #013439

Attorney for Canal Insurance Company and  
Greenwich Transportation Underwriters, Inc.



07000/63542-RDT

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Janice M. Bodiford, Clerk & Master  
of the Chancery Court  
of Hardeman County, Tennessee

SCHEDULING ORDER

Pursuant to a Rule 16.01 Scheduling Conference held on January 23, 2008, the following dates are established as the deadlines for:

DISCOVERY:

April 16, 2008; and

DISPOSITIVE MOTIONS:

May 28, 2008.

After the hearing on dispositive motion(s), the Court will set a deadline for the Rule 31 Mediation ordered by the Court unless the matter is disposed of on summary judgment.

This Order has been entered after consultation with counsel for all parties. Absent good cause shown, the dates set by this Order will not be modified or extended.

IT IS SO ORDERED.

ENTERED this 25 day of January, 2008.


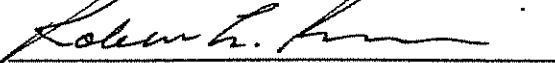
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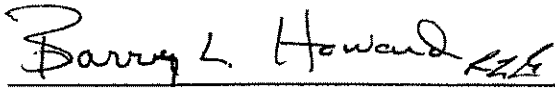
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CHANCELLOR WILLIAM COLE

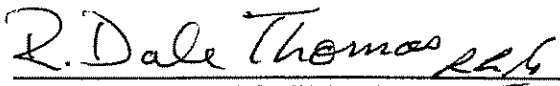
APPROVED FOR ENTRY:

RUSSELL X. THOMPSON, #008119  
ROBERT L. GREEN, #007849  
Attorneys for Plaintiff



BARRY L. HOWARD, #005887  
Attorney for Bolivar Insurance and Real  
Estate Agency, Inc.



R. DALE THOMAS, #013439  
Attorney for Canal Insurance Company and  
Greenwich Transportation Underwriters, Inc.

FILED Jan. 25, 2008  
at 12:45 o'clock, P.M.  
JANICE M. BODIFORD  
CLERK & MASTER  
BY 